

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
FOAMEX INTERNATIONAL INC., <i>et al.</i> ,	)	Case No. 05-12685 (KG)
	)	Appeal No. _____
	)	
Debtors.	)	(Jointly Administered)

**DESIGNATION OF THE RECORD ON APPEAL BY APPELLANT BANK OF  
NEW YORK, AS INDENTURE TRUSTEE AND STATEMENT OF ISSUE ON APPEAL**

Appellant The Bank of New York, as Indenture Trustee under an indenture dated as of December 23, 1997 (the "2005 Notes Indenture"), by and between BNY, as trustee, Foamex L.P and Foamex Capital Corporation (collectively with certain affiliates, the "Debtors"), each as Issuer, and certain subsidiary guarantors thereto, by and through its undersigned counsel, designates the following items to be included in the record on appeal and the following issue to be presented on appeal:

**DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

1. Memorandum of Law of the Bank of New York, as Indenture Trustee, in Support of Entry of Order Compelling Debtors to Pay Post-Maturity Compound Interest on their 2005 Notes in Accordance with their Confirmed Chapter 11 Plan (Docket No. 2298) (the "Opening Memorandum").
2. Exhibits A and B to the Opening Memorandum.
3. Memorandum of Law in Opposition to the Request of the Bank of New York, as Indenture Trustee, for Entry of an Order Compelling the Debtors to Pay Post-Maturity Compound Interest on the 2005 Subordinated Notes (Docket No. 2379).

4. Reply Memorandum of Law of The Bank Of New York, as Indenture Trustee, to Reorganized Debtors' Memorandum of Law in Opposition to the Request of The Bank of New York, as Indenture Trustee, for Entry of an Order Compelling the Debtors to Pay Post-Maturity Compound Interest on the 2005 Subordinated Notes (Docket No. 2400).

5. Order Denying the Request of The Bank of New York, as Indenture Trustee, to Compel the Reorganized Debtors to Pay Post-Maturity Compound Interest on the 2005 Notes (Docket No. 2430).

6. Transcript of Omnibus Hearing Before Honorable Kevin Gross United States Bankruptcy Judge, March 21, 2007, Case No. 05-12685 (Docket No. 2453).

7. Order and Findings of Fact, Conclusions of Law Confirming Debtors' Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated November 27, 2006, as Modified (Docket No. 2269).

8. Second Amended Chapter 11 Plan (Joint) of Reorganization under Chapter 11 of the Bankruptcy Code (Docket No. 1994) (the "Plan").

9. Second Amended Disclosure Statement for Debtors' Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code (Docket No. 1993).

**STATEMENT OF ISSUE ON APPEAL**

10. Whether the Bankruptcy Court erred in finding that, under New York law, the 2005 Notes Indenture does not require the payment of post-maturity compound interest, meaning

that the solvent Debtors' failure to pay such interest did not render the claims of the holders of the 2005 Subordinated Notes impaired in violation of the Plan?

Dated: April 12, 2007  
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP



Laurie Selber Silverstein (No. 2396)

Gabriel MacConaill (No. 4734)

Hercules Plaza

1313 North Market Street, 6th Floor

Wilmington, Delaware 19801

Telephone: (302) 984-6000

Facsimile: (302) 658-1192

-and-

DECHERT LLP

Glenn E. Siegel

Davin J. Hall

30 Rockefeller Plaza

New York, New York 10112

Telephone: (212) 698-3500

Facsimile: (212) 698-3599

Counsel to the Bank of New York,  
as Indenture Trustee